

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "Memorandum"), dated July 11, 2017 ("Effective Date"), is by and between THE LONG ISLAND RAIL ROAD COMPANY, a public benefit corporation organized under the laws of the State of New York, and having its principal office at Jamaica Station, 93-02 Sutphin Boulevard, Jamaica, New York 11435 (the "LIRR"), and THE VILLAGE OF FLORAL PARK, a municipal corporation and a political subdivision of the State of New York, and having its principal office at One Floral Boulevard, Floral Park, New York 11001 (the "Village"). The LIRR and the Village may be referred to herein individually as a "Party" or collectively as the "Parties."

### WITNESSETH:

WHEREAS, the LIRR is progressing its Main Line Expansion Project (the "Project") which will, among other things, add a third main track line within the existing LIRR right of way along a 9.8 mile corridor between Floral Park Station and Hicksville Station; and

WHEREAS, the LIRR is currently engaged in a procurement to select a design-builder to design and construct the Project (the design-builder so selected being hereinafter referred to as the "Design-Builder"); and

WHEREAS, the LIRR and the Village have been discussing certain concerns raised by the Village with respect to possible impacts of the Project on residents of and businesses located within the Village; and

WHEREAS, in a spirit of cooperation, the LIRR and the Village have reached agreement on a series of commitments by the LIRR to address such concerns as the Project proceeds; and

WHEREAS, LIRR and the Village are entering into this Memorandum of Understanding to memorialize such commitments and confirm LIRR's agreement to observe and abide by such commitments going forward as the Project proceeds.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the parties hereto agree as follows:

A. Definitions. Terms defined preamble and recitals have their assigned meanings and each of the following terms has the meaning assigned to it.

"County" shall mean the County of Nassau, New York.

"Design-Builder" shall mean the design-builder selected by the LIRR to design and construct the Project.

"Design-Build Contract" means the contract to be entered into for design and construction of the Project between the LIRR and the Design-Builder.

“Proposers” shall mean persons, firms, or other entities submitting proposals in response to the LIRR’s RFP.

“RFP” shall mean LIRR’s request for proposals, for a Design-Builder for the Project.

“Substantial Completion Date” means the date that the LIRR substantially completes construction of the Project.

“Substantially complete” or similar phrases (e.g., “Substantial completion”) shall mean attaining the stage in the progress of the Work where the Work has been completed to a point that it can be used for its intended purposes, as evidenced by the issuance of a Certificate of Substantial Completion by the LIRR pursuant to and in accordance with the Design-Build Agreement. Substantially complete does not include punch-list type items which may need to be completed.

“Work” means the furnishing of all labor, materials, plant, equipment, tools, supervision and other incidentals required by the Design-Build Agreement and the performance of all duties and obligations imposed by the Design-Build Agreement, including work performed pursuant to the warranty provisions of the Design-Build Agreement and work necessary to reconstruct and restore all structures, appurtenances/connection thereto including, but not limited to all LIRR real property and any other real property as may be affected by the Design-Builder’s performance. The Work shall also include all planning, design, and architectural engineering services required for the proper design and construction of the Project, including but without limitation all drawings and specifications, all design clarifications and all construction phase design professional services that may be necessary or desirable for the Project.

B. Term. This Memorandum shall have a term (the “Term”) commencing on the Effective Date and expiring upon the Substantial Completion Date, except that the provisions of Section (C)(28) and (C)(29) below shall survive for two (2) years and five (5) years, respectively, after the Substantial Completion Date. In the event that the (i) the proposed Capital Program Amendment to the MTA 2015-2019 Capital Program incorporating funding for the Project is not approved by the Capital Program Review Board by July 31, 2017, or (ii) LIRR does not enter into a Design-Build Contract with a Design-Builder, or otherwise abandons the Project, then this Memorandum shall be of no force or effect.

C. LIRR Commitments.

Village Input on Selection of Design Builder; Village Input on Design of Project.

1. Technical Committee Level – One (1) technical representative, representing all five (5) Villages along the Project corridor (Villages of Floral Park, New Hyde Park, Garden City, Mineola, and Westbury) (collectively, the “Project Villages”), will be invited to attend meetings of the technical committee(s) tasked with evaluating those quality of life aspects of proposers’ submissions identified by the Villages as being of concern to them (including, but not limited to, community outreach plan, noise and vibration control, station and sound wall aesthetics). The representative shall be chosen by the 5 Project Villages collectively and shall be reasonably satisfactory to LIRR. The technical representative’s reasonable fees and expenses

will be paid for by LIRR. The representative will restrict his/her discussion of the matters considered at such meetings solely to communicating his/her input to the members of the relevant technical committee(s) and will execute a Non-Disclosure Agreement (NDA) to that effect, in a form satisfactory to LIRR.

2. Final Selection Committee Level – The Final Selection Committee charged with selecting the Design-Builder will include an outside technical expert as well as a representative with knowledge of the corridor and technical expertise.

3. The Design-Build Contract will require regular consultation by the Design-Builder with the Village on design of project elements, excluding elements pertaining to rail operations such as track, switches, stations (other than Project ADA improvements at Floral Park station), platforms and railroad systems (including power, signal, communications and life safety). This consultation by the Design-Builder includes review of aesthetics for finishes including sound attenuation walls, fences, underpass walls, landscaping and station elements. While the ultimate decision on design would rest with LIRR, the LIRR will (i) provide sufficient notice (not less than 14 days) to the Village as to proposed aesthetic finishes so that the Village will have an opportunity to solicit input from, inter alia, adjoining property owners, and (ii) give due and careful consideration to any recommendations received from the Village on such matters and if LIRR chooses not to implement such recommendations, it will provide the Village with a written statement explaining the reasons for its decision.

#### **Community Safety and Quality of Life.**

4. The Design-Build Contract will require the Design-Builder to create an active program of construction security and maintenance to ensure community safety and quality of life in those areas of the Village where any Project Work is proceeding, including:

- a. Keeping construction sites clean and orderly.
- b. Safely store construction materials in piles/not haphazardly.
- c. Ensuring that construction fences are uniform and neat in material and appearance.
- d. Entirely fencing off all staging areas.
- e. Prohibiting littering and dispersion of personal debris (e.g., cups, cans, cigarettes) on the Project construction site, and any adjoining properties.
- f. Providing covered trash receptacles that are emptied daily.
- g. Performing street cleaning as appropriate to ensure construction debris and dirt will not affect the local community.
- h. Installing onsite/portable bathroom facilities that are unobtrusive to local communities.
- i. Protecting access to existing businesses.
- j. Providing satellite parking for construction workers so as to keep personal construction worker vehicles off of residential streets.

k. Scheduling construction deliveries outside of school and commuter traffic peak hours to the extent practicable while school is in session.

The Design-Build Contract shall include a provision establishing a quarterly scoring of the Design-Builder's performance in respect of observing the provisions set out above in this Section (C)(4), during the period of construction of the Project. If the Design-Builder meets or exceeds a target score for a quarter, it shall be entitled to earn a \$250,000 incentive payment (up to a maximum of \$4 Million in the aggregate over the life of the Project). The minimum target score for achievement of the incentive shall be set by LIRR in consultation with the Project Villages. Scoring shall be done by utilizing a score sheet developed by LIRR (which may be either in paper or digital format, to be decided on by LIRR in consultation with the Project Villages) and disseminated by the Project Villages to their residents who live within a to-be-agreed upon distance from the LIRR main line. The Project Villages shall be responsible for ensuring that the scoresheets are distributed fairly, that respondents identify themselves by name and address, and that a representative sampling of such residents' opinions, without duplication or manipulation, is obtained for each scoring effort. In the event the Design-Builder does not earn an incentive for any quarterly period as a result of the score it obtains, the amount of such unearned incentive shall be transferred by the LIRR, up to a maximum aggregate amount of \$4 Million, to a fund to be held by LIRR, to be used to reimburse a Project Village for additional expenses incurred by it to address any failure by the Design-Builder to observe such provisions or the provisions of Section 31 below within its jurisdiction, resulting in the Design-Builder not achieving the target score. A Project Village may apply for reimbursement by submitting a written requisition to LIRR, together with reasonable back-up documentation of the nature and purpose of the expenditure claimed. Payments from such fund shall not be unreasonably withheld or delayed. If at any time, outstanding claims against this fund exceed the remaining monies therein, LIRR shall have the right to allocate the remaining funds in a manner it determines to be equitable. Scoring will take into account where Work is being performed during the scored period.

### **Construction Duration**

5. The Design-Build Contract will include schedule incentives to minimize community impacts. In the event the Design-Builder fails to meet certain contractual milestones under the Design-Build Contract identified in this Section (C)(5), and is thereby obligated to pay liquidated damages under such Contract to the LIRR, the LIRR shall make a payment to the Project Community Fund (see below) in accordance with the following conditions and limitations: (a) for a failure by the Builder to limit total closure of the underlying road for replacement of either the Plainfield Avenue Bridge or the South Tyson Avenue Bridge to no more than 2 weekend periods (excludes temporary or partial road closures for abutment and other ancillary work), as such time frame may be adjusted for force majeure or other causes not

chargeable to the Design-Builder as per the Design-Build Contract, the sum of \$3,000/week for each week the underlying road remains totally closed beyond such two weekend period will be added to the amount allotted from such Fund specifically to the Village under Section (C)(24)(B); (b) for a failure by the Design-Builder to meet the milestone date for Substantial Completion of the Project, as it may be adjusted for force majeure or other causes not chargeable to the Design-Builder as per the Design-Build Contract, the sum of \$5,000/week for each week Substantial Completion of the Project is delayed beyond such milestone date will be added to the amount allotted from such Fund specifically to the Village under Section (C)(24)(B). The Village agrees that this Section (C)(5) shall in no way limit or condition the LIRR's ability to enforce, negotiate, waive, or compromise any liquidated damages payable by the Design-Builder to LIRR under the Design Build Contract. In the event LIRR becomes obligated, pursuant to this Section (C)(5), to add certain sums to the amount allotted from the Project Community Fund specifically to the Village under Section (C)(24)(B), such obligation shall in no way be affected by any waiver or compromise of any liquidated damages payable by the Design-Builder to the LIRR under the Design-Build Contract.

### **Communication Plan**

The Design-Build Contract will require:

6. Prior to the start of construction, the Design-Build Contract will require the Design-Builder to create a Communications and Public Outreach Plan including a protocol for addressing community complaints.
7. The Design-Builder will be required to give advance notification of any disruptive work or road closures to residents, municipalities, school districts and first-responders.
8. The Design-Builder shall provide regular updates to the public in the form of email blasts, automated phone calls, and online postings.
9. The Design-Builder shall staff a project office with on-site supervision, for the entire duration of the period when work is being done in the community.
10. The Design-Builder shall coordinate with local school districts to provide alternate transportation to schools where temporary or short-term road closures would either substantially increase walking distance to schools or make on-foot travel to school substantially more problematic in terms of safety hazards.
11. The Design-Builder shall be required to give a minimum of fourteen (14) days advance notification of construction work planned to take place adjacent to local schools, to the appropriate school officials, and shall coordinate with local schools to schedule such construction activity as unobtrusively as practicable, with sensitivity to the annual school calendar.
12. The Design-Builder shall coordinate with emergency service providers to ensure continuity of access to the community.

13. Prior to the start of construction, the LIRR shall establish regular meetings for LIRR, Village officials, community representatives, and the contractor to discuss construction activities and community concerns.

14. The Design-Builder shall provide and staff a 24/7 construction hotline to receive and respond to input and complaints in accordance with the Communications and Public Outreach Plan. The Design-Builder will maintain a log of all calls received, and track follow up. Copies of such logs shall be provided to the Village. If a call/complaint relates to a matter involving a significant imminent threat to human health or safety, the Design-Builder shall be required to respond immediately. In all other cases, the Design-Builder shall be required to respond within 24 hours.

15. LIRR shall furnish the Village with the name and telephone number of a governmental liaison or alternate for the Project, who may be contacted at any time (24 hours/7 days a week) on Project-related issues and problems.

### **Traffic**

The Design-Build Contract will require that:

16. Prior to the start of construction of the Project, the Design-Builder shall establish and confirm acceptability of a proposed Work Zone Traffic Control Plan (WZTC) with the Village, residents, and affected police and emergency response jurisdictions to facilitate safe and effective enforcement.

17. The WZTC Plan shall recognize the need for approval of the use of local public roads.

18. The Village agrees that approvals for the use of roads will not be unreasonably withheld by the Village.

19. The Design-Build Contractor will restore roads impacted by traffic diverted due to construction, or by construction vehicles using them in the course of constructing the Project. The degree of restoration required shall be determined by a committee consisting of an LIRR-designated highway engineer and a Village-designated highway engineer, based on the Village's standard of constructing roadways for a 30-year life under normal use, and giving due consideration to wear and tear that is de minimis and can be addressed with limited repairs, and wear and tear not reasonably attributable to traffic diverted due to the construction.

20. Traffic control shall be provided by the Design-Builder in consultation with Village to ensure safe and efficient routing of traffic.

### **Utilities**

21. The RFP will recognize the preference of the Village not to have utilities mounted on poles alongside the right of way and to instead bury such utilities where feasible. The RFP will require the Design-Builder to bury such utilities where determined by LIRR to be feasible, based on consideration of cost, safety, operational need and the consent of the owner(s) of such

utilities. The LIRR will consult with the Village on this subject prior to making a final determination.

### **Drainage**

22. Prior to the start of construction, the LIRR will work in good faith with the Village and the County to find the least intrusive drainage solutions for the Village that are economically feasible.

23. The Design-Build Contract will require the Design-Builder to restore roads disturbed by drainage path, with restoration to be determined in the same manner as reflected in Section (C)(19) above.

The Design-Build Contract shall include an explicit commitment that the Design-Builder will confer with the Village and/or its consultants to discuss the approach in the Project design to ensure that installation of the retaining walls and, as appropriate, other Project work within the Village, will not result in drainage impacts on properties adjacent to the ROW.

### **Project Community Fund**

24. Prior to the start of construction, the LIRR will establish a Project Community Fund, to be held by LIRR, in the aggregate amount of \$20 million, as follows:

(A) \$4 million as a general reserve.

(B) \$16 Million to be allocated to the Project Villages, the Towns of North Hempstead and Oyster Bay (as representative for unincorporated areas along such corridor) and the County (8 recipients in total). The amount to be allocated to each recipient shall be based on a formula developed by LIRR that takes into account the relative amount of work to be done in each such Village and unincorporated area (based on geographic track work, grade crossing work, station work, bridge work, and substation work).

25. Each recipient may apply its allotment from the Fund under Section (C)(24)(B) above for reimbursement of Qualified Costs, upon written requisition from the Fund, accompanied by reasonable back-up documentation of the nature and purpose of the expenditure claimed as a Qualified Cost and proof of it being paid by the recipient. Qualified Cost shall mean a cost or expense incurred and paid for by the recipient (a) the reimbursement of which would be legally payable out of the proceeds of bonds, notes or other evidences of indebtedness issued by the State of New York or by the Metropolitan Transportation Authority in respect of the Project, (b) is otherwise fully legal under the laws of New York State for the recipient to incur and pay, and (c) is directly related to the Project either by way of being used by a recipient to (i) engage technical consultants to assist in its review of the implementation of the Project, or (ii) implement measures to mitigate or offset an impact on the recipient caused by the Project, and (d) is not contrary to any State laws. LIRR shall determine whether a claimed cost is a Qualified Cost based on the above criteria. Provided they otherwise meet all of the criteria set out in in this

Section (C)(25), Qualified Costs may include (by way of example) fees payable to technical consultants to examine and review drainage or stormwater pollution prevention plans, costs of business district improvements to beautify downtown business districts and help offset loss of business resulting from any reduction in access due to Project construction, costs of additional street sweeping/cleaning, costs of additional stormwater control measures to address runoff from the Project, costs of additional landscaping to reduce noise/visual impacts of the Project, and costs of parking/traffic improvements to replace parking lost due to construction of the Project and to reduce traffic congestion caused by construction of the Project).

26. The amount of funds in the Project Community Fund may be augmented as provided as provided in Section (C)(5) above. Monies deposited into the Fund pursuant to Section (C)(5) shall be used to defray Qualified Costs.

Moreover, in the event construction of the Project (other than minor, punch list-type items) extends beyond a period of four (4) years from the date of the Notice to Proceed under the Design-Build Contract, for every calendar quarter that construction of the Project continues beyond such 4-year period up to the Substantial Completion Date of the Project, the sum of \$250,000 shall be added to the Project Community Fund to be allocated by LIRR for the purpose of defraying Qualified Costs among the jurisdictions listed in Section (C)(24)(B), based on where the Project construction work occurring beyond such 4-year period is taking place, the nature of such work, and the nature of the impacts on the residents and businesses of the affected jurisdiction(s).

27. The general reserve under Section (C)(24)(A) above shall be used by LIRR to reimburse any of the Project Villages for Qualified Costs incurred during the period of construction, for which insufficient monies remain in such Village's individual allotment under Section (C)(24)(B).

28. The remaining funds in the Project Community Fund shall not be recaptured by LIRR upon Substantial Completion of the Project but shall remain open and available for application for a period of two (2) years following Substantial Completion of the Project. If at any time, outstanding claims against the reserve fund exceed the remaining monies therein, LIRR shall have the right to allocate the remaining funds in a manner it determines to be equitable.

#### **Additional Reserve Fund**

29. An additional reserve fund of \$10 Million shall be created by LIRR, to be held by LIRR, to be used to reimburse Project Villages for Qualified Costs associated with addressing Project-related impacts which arose after the Substantial Completion Date of the Project and which were unanticipated before such date. Such additional reserve fund shall remain open and available for application for a period of five (5) years following the Substantial Completion Date of the Project. Any unused funds remaining after such 5 year period shall revert to LIRR. If at any time, outstanding claims against the additional reserve fund exceed the remaining monies



therein, LIRR shall have the right to allocate the remaining funds in a manner it determines to be equitable.

#### **Pre-Construction Condition Survey**

30. The Design-Builder shall conduct a pre-construction inspection and survey of the existing condition of all structures, roads and properties within the Village immediately adjacent to the LIRR Main Line Right of Way (ROW) and within other agreed-upon project construction areas for the purposes of generating photographic and video documentation of existing damage, leaks and cracks. The Village shall receive a copy of the pre-construction survey and shall be entitled to accompany the Design-Builder or its consultant on such inspection and survey, if the Village so requests. The pre-construction condition survey shall form the basis against which all new cracks, existing progressive cracks, or damage will be measured. The Design-Builder shall pay, or reimburse the affected property owner, for all repairs necessary to address damage caused by construction of the Project, in order to return the structure, road or property to its pre-construction condition, ordinary wear and tear excepted.

#### **Pest Control**

31. The Design-Build Contract shall require that in consultation with the community the Design-Builder will employ rodent and pest control measures to ensure that pests and rodents are not a greater nuisance than in the pre-construction state.

#### **Dust Control**

The Design-Build Contract shall require that:

32. The Design-Builder to control dust emanating from the Project on public roadways.

33. The Design-Builder will employ reasonable measures to minimize the possibility of vehicles leaving the construction site depositing no mud or dirt on public roadways in the Village. Gravel cover shall be applied to soil (unpaved) surfaces where they will be regularly traveled at egress and ingress routes from/to work sites.

34. Vehicle mud and dirt carryout, material spills, and soil washout onto public roadways and walkways and other paved areas in the Village shall be cleaned as necessary.

35. The Design-Builder is responsible for daily clean-up of public roadways and walkways in the Village affected by the Work. A wet spray power vacuum sweeper or similar equipment shall be used on paved roadways. Dry power sweeping is prohibited.

36. Prior to the start of construction, the Design-Builder shall provide the Village with a copy of all stormwater pollution prevention plans which Builder was required to prepare for the Project before construction begins.

#### **Sound Attenuation Walls**

37. The Design-Build Contract shall require that sound attenuation barrier surfaces in the Village shall have architecturally treated concrete; LIRR will consult with and seek input from the Village on the nature of the treatment.

38. Top of sound attenuation barriers in the Village shall be at least 8' above the lower proposed ground line adjacent to the barrier or 4' above top of rail, whichever is greater.

39. In consultation with the Village and LIRR landscaping and irrigation (where feasible, including availability of a water source within a reasonable distance) will be added near the wall on the outside of the LIRR ROW where space is available. Maintenance and care of such landscaping (and irrigation system, where applicable) shall be the responsibility of the Village or a community organization approved by the Village. LIRR shall have no responsibility for maintaining such landscaping or irrigation systems for such landscaping.

### **Train Service**

40. As per the analysis in the Final Environmental Impact Statement (FEIS) for the Project, the Project is projected to add trains along the main line corridor. Based on the FEIS and further analysis, LIRR projects adding 4 trains per day serving the Floral Park Station based on historic ridership data and estimated ridership growth, including growth attributable to additional reverse peak service. While LIRR is committed to adding train stops to service such ridership growth, if achieved, LIRR reserves the right to revise service levels based on customer demand, equipment availability, operating needs and agency budget.

### **Visual Impacts**

41. The Design-Build Contract will require the Design-Builder to consult with the Village on, aesthetic finishes for sound walls and the ADA access facilities added at Floral Park Station, including the submission of the Builder's plans for such aesthetic finishes for Village review. While final decision on aesthetic finishes rests with LIRR, LIRR shall, in a manner consistent with Section (C)(3) above, give due and careful consideration to and respond to the Village's recommendations on such matters.

### **Environmental Measures:**

The Design-Build Contract will require the Design-Builder to do the following:

42. Provide environmental monitoring consistent with a Construction Health and Safety Plan (CHASP).

43. Implement a Stormwater Pollution Prevention Plan (SWPPP) in compliance with applicable law.

44. Use directional lighting at night to limit light pollution to residences

45. Implement an air quality control plan to include dust control measures, ultra-low sulfur diesel fuel, the use of best available tailpipe technologies such as diesel particulate filters, and the utilization of newer equipment.

46. Create and implement a community noise and vibration monitoring program.

47. Minimize noisy work during nighttime hours where practicable and feasible.

48. Prior to commencement of construction within the LIRR right-of-way within the Village, LIRR shall cause the Design-Builder to conduct one additional round of soil testing within the railroad right of way in the Village, in areas where soil is expected to be disturbed during construction. Distance intervals to be agreed upon by LIRR and the Village. The test results shall be provided to the Village. The Design-Build Contract shall require that any soil disturbed in connection with the Project shall be handled and disposed of in accordance with all applicable laws.

### **Parking**

49. LIRR and the Design-Builder will work to minimize any net loss of parking spaces at the Floral Park station to no more than approximately five (5) parking spaces.

50. The Builder shall provide parking near the station to offset parking lost during construction.

### **Special Provisions Applicable to Floral Park**

#### **Construction Staging/Creedmoor Spur**

51. MTA LIRR will not utilize the Creedmoor Spur for construction staging so that the Village can continue to use it for parking.

52. MTA will amend the lease with the Village for the Creedmoor Spur to reduce rent to \$1/year for a period of four (4) years during construction of the Project. In addition, MTA will perform a one-time repaving and restriping of the parking area on the leased property, to maximize the number of available parking spots subject to safety considerations and any applicable laws.

#### **Recreation Center**

53. The LIRR recognizes the importance of the recreation center and pool to the Village and its residents and will require the Design-Builder to schedule construction in consultation with the Village to (i) avoid all disruptive work (e.g., pile driving, use of heavy equipment such as excavators and backhoes) adjacent to the pool during peak season (Friday before Memorial Day through Labor Day), and limit work near the pool during that period to non-disruptive work and normal LIRR operation and maintenance work, and (ii) otherwise minimize, to the extent practicable, the impact of Project work on use of the recreation center and ballfields. The Design-Builder will cease all construction activity near the pool on April 15 of each year, to allow for the Village to inspect the pool and take any necessary corrective action prior to the peak pool season beginning.

54. The Design-Build Contract shall require the Design-Builder to conduct a pre-construction inspection and survey of the pool for the purposes of generating photographic and video documentation of existing damage, leaks and cracks. The Village shall be entitled to accompany the Design-Builder or its consultant on such inspection and survey, if the Village so requests, and the Village shall receive a copy of the pre-construction inspection and survey of the pool. The pre-construction condition survey shall form the basis against which all new cracks, existing progressive cracks, or damage to the pool will be measured. The Design-Builder shall pay, or reimburse the Village for, all necessary repairs to address damage to the pool caused by construction of the Project, in order to return the pool to its pre-construction condition, ordinary wear and tear excepted.

**Soil Testing**

55. See Section 48.

**Other Items**

56. As part of the Project, addition of three (3) ADA compliant elevators from sidewalk level to elevated station platform at Floral Park Station, including appropriate ADA wheelchair curb cuts on LIRR property.

Separate from the Project, LIRR will make appropriate aesthetic improvements at the Floral Park and Bellerose Stations, with the improvements at Floral Park station consisting of improved lighting, benches, railings, signage/wayfinding, and the repair/replacement of damaged wheelchair curb cuts on LIRR property.

57. Separate from the Project, LIRR will work with Village, to examine options and seek to identify a solution that will enable larger fire trucks (capable of providing improved emergency response services) to access the Atlantic Avenue Firehouse without adversely impacting LIRR rail operations.

**D. Events of Default; Remedies.**

(a) If either Party shall default in its representations, warranties, covenants and obligations to be performed under this Memorandum, and such default shall continue for thirty (30) days after notice to the defaulting Party, or if it is not reasonable to cure such default within a thirty (30) day period, then such longer period as may be reasonable under the circumstances, the sole remedies of the non-defaulting Party shall be to seek to enjoin actions or to bring an action for specific performance of the defaulting Party's obligation under this Memorandum, provided that any such remedies must be initiated not later than ninety (90) days after the expiration of the cure period hereunder. Time shall be of the essence as of the expiration of such ninety (90) day period.

(b) Legal actions instituted due to any default must be instituted in the court located in the State of New York. The rights and remedies of the parties are cumulative and the exercise

by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

E. Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Memorandum to be made, given or furnished to the other Party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested or by overnight delivery service, in an envelope addressed as follows:

If to the Village:

Village of Floral Park  
Village Hall  
One Floral Boulevard  
Floral Park, New York 11001  
Attention: Dominick A. Longobardi, Mayor

With a copy to:  
Michael G. Murphy, Esq.  
Beveridge & Diamond, P.C.  
477 Madison Avenue  
New York, New York 10022

If to the LIRR:

Long Island Rail Road Company  
Jamaica Station  
93-02 Sutphin Boulevard, 3<sup>rd</sup> Floor  
Jamaica, New York 11435  
Attention: Patrick A. Nowakowski, President

With a copy to:

Long Island Rail Road Company  
Jamaica Station  
93-02 Sutphin Boulevard, 4<sup>th</sup> Floor  
Jamaica, New York 11435  
Attention: Mark D. Hoffer, Esq.  
Vice President-General Counsel & Secretary

F. Miscellaneous Provisions.

(a) No Waiver. No failure on the part of either Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any

single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.

(b) No Third-Party Beneficiary. Nothing in this Memorandum shall be deemed to create any right in any person not a party hereto other than permitted successors and assigns of a Party hereto, and this Memorandum shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

(c) Severability. If any provision of this Memorandum shall be determined to be invalid, illegal or unenforceable in any respect, such determination shall not affect any other provision hereof.

(d) Headings. The headings contained in this Memorandum are for convenience only and shall not be interpreted to limit, control, or affect the meaning or construction of the provisions of this Memorandum.

(e) Joint Preparation. This Memorandum shall be deemed to have been jointly prepared by the Parties. This Memorandum has been negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party.

(f) Governing Law. This Memorandum shall be governed by and construed under the laws of the State of New York.

(g) No Recourse. No recourse shall be had by either Party for any claim against any officer, director, stockholder, employee or agent of any other Party alleging personal liability on the part of such person with respect to performance of the LIRR's or the Village's obligations under this Memorandum.

(h) Counterparts. This Memorandum may be executed in any number of counterparts and by each Party on a separate counterpart, each of which when so executed and delivered will be deemed an original and all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Memorandum by facsimile or electronic mail transmission shall be effective as delivery of a manually executed counterpart to this Memorandum.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed by their proper officials, pursuant to due and legal action authorizing the same, as of the day and year first written above.

THE LONG ISLAND RAIL ROAD COMPANY

By: /s/ Mark D. Hoffer

Name: Mark D. Hoffer

Title: Vice President - General Counsel & Secretary

THE VILLAGE OF FLORAL PARK

By: /s/ Dominick A. Longobardi

Name: Dominick A. Longobardi

Title: Mayor

STATE OF NEW YORK )

) ss.:

COUNTY OF Nassau )

On the 11th day of July in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Dominick A. Longobardi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/s/ \_\_\_\_\_ Notary Public

STATE OF NEW YORK )

) ss.:

COUNTY OF Queens )

On the 11th day of July in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Mark D. Hoffer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/s/  
\_\_\_\_\_  
Notary Public